

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
BRYSON CITY DIVISION**

**CIVIL CASE NO. 2:06cv29**

**VERIZON SOUTH, INC.,** )  
 )  
 **Plaintiff,** )  
 )  
 **vs.** )  
 )  
 **CHERYL OWLE, EASTERN** )  
 **BAND OF CHEROKEE INDIANS** )  
 **CHEROKEE COURT, and** )  
 **JUDGES OF THE EASTERN** )  
 **BAND OF CHEROKEE INDIANS** )  
 **CHEROKEE COURT, in their** )  
 **official capacities,** )  
 )  
 **Defendants.** )  
 \_\_\_\_\_ )

**ORDER**

**THIS MATTER** is before the Court on the Plaintiff's motion for a preliminary injunction, the motion to dismiss of the Eastern Band of Cherokee Indians Cherokee Court and Judges of the Eastern Band of Cherokee Indians Cherokee Court (the Cherokee Court and its Judiciary), the motion to dismiss of Defendant Owle, and the notice of the Plaintiff that it will voluntarily dismiss the Cherokee Court and its Judiciary.

Contained within its motion to dismiss, the Cherokee Court and its Judiciary noted that the Plaintiff could avoid decision on its motion by voluntarily dismissing those entities from this suit. On November 27, 2006, the Plaintiff filed such a dismissal and as a result, these defendants are dismissed from the action and the caption should be so amended.

**Fed.R.Civ.P. 41(a)(1)(i).**

The Plaintiff has also filed a response to the motion of Defendant Owle to dismiss the action and to deny the preliminary injunction. The Plaintiff has advised that the Cherokee Court has ruled that it will not require it to answer or otherwise plead in the tribal court matter until 15 days after this Court enters final judgment in connection with this complaint. In the motion for a preliminary injunction, the Plaintiff sought “to enjoin Defendant Cheryl Owle [] from continuing to pursue the lawsuit captioned *Cheryl Owle v. Verizon South, Inc.* and docketed as Tribal Court No. CV06-467 [.]” **Motion for a Preliminary Injunction, filed October 31, 2006.** Since the tribal court has ruled that it will not require the Plaintiff to answer or otherwise appear in that matter until this lawsuit is resolved, the motion for preliminary injunction has been rendered moot. However, if the status of that action changes, the Plaintiff may renew the motion.

Moreover, a review of the pleadings discloses that the motion to dismiss of Defendant Owle alleges that there is no jurisdiction in this Court and that the complaint fails to state a claim upon which relief may be granted. It appears from the pleadings that this is an action which may be resolved by motion for summary judgment. The case appears to be one which turns on a question of law, not facts. As a result, the Court will convert the motion to dismiss to one for summary judgment and will provide the parties with an opportunity to present all material pertinent to such a motion.

**IT IS, THEREFORE, ORDERED** that the Plaintiff's motion for a preliminary injunction is hereby **DENIED** without prejudice to renewal; and

**IT IS FURTHER ORDERED** that the motion to dismiss of Defendant Owle is hereby converted to a motion for summary judgment and the parties may file any further material in support thereof on or before 15 days from entry of this Order.

Signed: December 28, 2006

A handwritten signature in black ink, appearing to read 'L. H. Thornburg', is written over a horizontal line.

Lacy H. Thornburg  
United States District Judge

